United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-2160

In The

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket Nos. 74-2160
74-2320

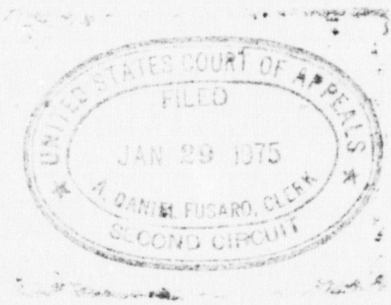
UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs

WILLIAM MONKS
and
ANTHONY THOMAS CAMPANILE
Defendants-Appellants

On Appeal From The United States District Court
For The District of Vermont at Criminal
Action No. 73-58

BRIEF FOR APPELLANT, ANTHONY THOMAS CAMPANILE



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PRELIMINARY STATEMENT

This is an appeal by ANTHONY THOMAS CAMPANILE, one of two co-defendants who were tried by a jury in the United States District Court, District of Vermont, the Honorable Albert Coffrin, presiding, and found guilty of two counts of bank larceny. 18 U.S.C.A. 2113(b).

STATEMENT OF THE CASE

Anthony Thomas Campanile and William Monks were indicted by a Grand Jury on two counts of bank larceny pursuant to 18 U.S.C. 2113(b) and 18 U.S.C. 2. The case came on for a trial by Jury commencing April 16, 1974. During trial evidence that - (a) burglary of American Legion Post situated in Enosburg Falls, Vermont, on May 31, 1973; (b) statements obtained by federal agents upon interrogation of Defendant Campanile after he had been in custody for a period of twenty (20) hours without benefit of counsel; (c) testimony that Defendant Monks informed a third party in August 1972 that Defendants Monks and Campanile planned to rob a bank in New Jersey; (d) a German Luger, ammunition, gun-cleaning equipment; were introduced into evidence.

Defendant Campanile was denied standing on his Motion to suppress evidence seized by federal authorities in Patterson, New Jersey on June 5, 1973.

On April 26, 1974, the Jury returned a verdict of guilty on both counts against both Defendants.

ISSUES PRESENTED

Should the judgment of the District Court of Vermont be vacated and the case of UNITED STATES OF AMERICA vs. ANTHONY THOMAS CAMPANILE be remanded for a new trial because of reversible error on the following grounds:

1) Introduction of evidence pertaining to the burglary of the American Legion Post.

2) Introduction of Defendant Campanile's statement to federal agents after a twenty (20) hour detention without benefit of counsel.

3) Introduction of Defendant Monks' statement that Monks and Campanile planned to rob a bank in New Jersey in 1972.

4) Defendant Campanile's denial of standing to suppress evidence alleged to have been unlawfully seized.

5) Introduction of a German Luger, ammunition and gun cleaning equipment.

STATEMENT OF FACTS

On or about May 30, 1973, some person or persons did unlawfully break and enter into the Howard Bank in Enosburg Falls, Vermont, and the Franklin Bank in Milton, Vermont, and did take and carry away therefrom coin currency, in varying denominations, in total value of three thousand

two hundred forty-one dollars and twenty-three cents ($3,241.23). Both burglaries were discovered by personnel of said banks upon reporting for work on the morning of May 31, 1973.

A burglary at the American Legion Post, in Enosburg Falls, Vermont, was discovered at 11:00 a.m. on the morning of May 31, 1973. Cash, coins and Pall Mall and Chesterfield cigarettes were taken during the burglary.

The facts, taken in the light most favorable to the United States, indicate that Defendants Campanile and Monks were guests at the American Legion Post, in Enosburg Falls, Vermont, from shortly before midnight on May 30, 1973, until 12:30 a.m. on the morning of May 31, 1973, at which time the Post was closed and both Defendants departed from the premises.

Both Defendants were next seen together in St. Johnsbury, Vermont at 10:00 a.m. on May 31, 1973. At that time, Defendants were operating a Chevrolet van bearing New Jersey registration number XFL-98N. Because of mechanical difficulty with this vehicle, an offer was made to Government witness Fred Priest to transport the Defendants to New York City for the sum of $100.00. This offer was accepted and said Priest, together with Government witness McCullock, drove both Defendants to an apartment building situated in Patterson, New Jersey.

The Government was permitted to introduce evidence relative to the burglary of the American Legion Post in Enosburg Falls, Vermont, and to introduce into evidence cigarettes which were allegedly stolen therefrom.

Government Agent McCartin testified that Defendant Campanile admitted that he had stolen the Chevrolet van that was left in St. Johnsbury, Vermont, and Campanile's purpose in coming to Vermont was to line up robberies. At the time of this statement, Defendant Campanile had been detained by authorities for a period of twenty (20) hours without being represented by counsel and was undergoing withdrawal symptoms because of drug usage.

Government witness Brown testified that in August, 1972, she was informed by Defendant Monks that Defendant Monks and Defendant Campanile intended to rob a bank in West Milford, New Jersey. The Court instructed the Jury that witness Brown's testimony could be considered against Defendant Campanile.

Defendant Campanile's brother, Michael Campanile, resides in one of two basement apartments situated at 444 East 36th Street, Patterson, New Jersey. On June 4, 1973, Federal Authorities filed an application before a Federal Magistrate

to search the only basement apartment situated at 444 East 36th Street, Patterson, New Jersey, for the purpose of obtaining evidence against Defendant Campanile in reference to the transportation of a stolen motor vehicle in Interstate Commerce. On June 5, 1973, law enforcement authorities not only searched the Campanile apartment but also that portion of the basement that was used for common storage by all of the tenants thereof, and the land situated adjacent to this building and used for rubbish disposal by the tenants thereof. During that seach, a black Samsonite briefcase containing a German Luger, ammunition, gun cleaning equipment, among other items; four glass containers containing eighty-five dollars and fifty cents ($85.50) worth of quarters, seventy-seven dollars and ninety cents ($77.90) worth of dimes, nine dollars and seventy-five cents ($9.75) worth of nickels, and fifteen dollars and twenty-six cents ($15.26) worth of pennies; two cartons of Pall Mall cigarettes bearing Vermont Tax Stamps and one carton of Chesterfield cigarettes bearing Vermont Tax Stamps were taken from the Campanile apartment. In addition, a General floor waxer, wire brush, Electrolux Commercial Vacuum with power nozzel, window cleaning attachments, and miscellaneous cleaning pads were

seized from the common storage area of the basement of said building.

Defendant Campanile and his wife rented the premises, searched by the authorities on June 5, 1973, in 1967 and remained in sole possession thereof until 1972. At that time, Defendant's brother, Michael Campanile, moved into possession with the agreement that Defendant Campanile could use that apartment when he desired, and Defendant Campanile did occasionally stay at this apartment from January, 1972 to June 5, 1973.

THE ADMISSION OF EVIDENCE OF AMERICAN LEGION BURGLARY (PRIOR SIMILAR ACTS) CONSTITUTED REVERSIBLE ERROR.

The issue of the admissibility of evidence of the American Legion break-in was raised below when the trial judge allowed the evidence over the continuing objections of Defendants (Record at 202). The indictment did not cover the American Legion and no state or federal charges were pending for the alleged criminal activity at the American Legion at the time of the trial.

The general rule is that evidence of other criminal acts of the accused are not admissible "unless the evidence is

substantially relevant for some other purpose than to show a probability that he committed the crime on trial because he is a man of criminal character". McCormick, Law of Evidence, 327, §157 (1954). This is but a specific application of the prohibition against the introduction of bad character by the prosecution unless it is made an issue by the introduction of evidence of good character by the defendant. The reason for this rule is not because such evidence is irrelevant, but because this type of evidence presents a danger of prejudice. Thus, the courts have long recognized that evidence of other crimes, not connected with that for which the accused is on trial, is clearly prejudicial and its admission reversible error. Gray v. State, 250 Ark 842, 469 S.W. 2d 123 (1971); State v. Edwards (Or App) 493 P 2d 180; U.S. v. Magee (Ca 7 Ind) 261 F 2d 609. It is Defendant's contention here, and it was Defendant's contention below, that admission of evidence of the American Legion break-in was reversible error.

The lower court's grounds for admitting evidence of the American Legion break-in was as an exception to the general rule that evidence of other crimes is inadmissible. Specifically, the trial judge ruled that evidence of the American Legion

break-in was admissible to show a common "scheme or design" (Record at 27-28, 201, 1319). Defendant appreciates that evidence of other criminal acts may be relevant when offered for purposes other than to show Defendant's bad character, and to show a common scheme or plan is one of the judicially recognized "other purposes". But Defendant contends that the unlawful entry into the Legion Post can not even be considered as a prior similar act.

In order for evidence of other crimes to come in as a "common plan or scheme", there must be sufficient evidence of similarity between the offenses. Where the evidence of other crimes fails to show the use of a plan similar to that used in the crime on trial, the evidence of the prior crime is not admissible under the theory of a "common plan or design". Mason v. State, 259 Ala 438, 66 So 2d 557 (1953); U.S. v. Bussey, 139 App Dc 268, 432 F 2d 1330. On the state of the evidence in the case at bar, there are no distinctive and common features between the American Legion break-in and the offenses covered by the indictments. It is not even the same general type of criminal activity. In one case (crimes on trial) it is larceny and in the other (American Legion) it is breaking and entering in the nighttime.

Even assuming, arguendo, that the trial court was correct in finding that evidence of the American Legion break-in was independently relevant with respect to the crimes charged, its admission to the jury was reversible error for two reasons. First, there must be a certain quantum of evidence substantiating the other crime before submitting it to the jury. Professor McCormick suggests that there must be "clear and convincing" evidence of the other crime, before the jury considers it. McCormick, Law of Evidence, 331, §157 (1954). In the case at bar, the "clear and convincing" evidence test to link the Defendant with the American Legion break-in was never met.

Secondly, the admission of the evidence of the other crime, even if independently relevant and established by "clear and convincing" evidence was an abuse of the trial judge's discretion. The probative value of the evidence of the break-in was outweighed by the unfair prejudice to the Defendant. The courts have long recognized that this type of evidence should be avoided, even when it has substantial independent relevancy, when its effect will be an undue prejudice on the Defendant. State v. Goebel, 36 Wash 2d 367, 219 p 2d 300 (1950); U.S. v. Krulewitch (2nd Cir, 1944), 145 F 2d 76;

U.S. v. Brettholz, 485 F 2d 483 (1973); U.S. v. Knohl (2nd Cir, 1967) 379 F 2d 427. In other words, it is not merely a mechanical application of the "other crimes" rules, but also one of balancing if the situation fits into one of the recognized exceptions. This opinion was expressed in this Circuit in Krulewitch as follows:

> "As has been said over and over again, the question is always whether what it will contribute rationally to a solution is more than matched by its possibilities of confusion and surprise, by the length of time and expense it will involve, and by the chance that it will divert the jury from the facts which should control their verdict". (At Page 80)

In the case at bar, the probability of prejudice from evidence of the American Legion break-in has to be weighed against its probative value. Although it is impossible to accurately weigh its actual prejudicial effect on the jury without violating the sanctity of the jury room, the probability of its adverse effect is obvious. Courts have long recognized the pressure on lay jurors to believe that "if he did it before he probably did so this time". Gordon v. U. S., 383 F 2d 936, 940 (1967).

THE TRIAL COURT ERRED IN ADMITTING DEFENDANT CAMPANILE'S STATEMENT OVER THE OBJECTION OF COUNSEL.

Defendant Campanile made a statement to the F.B.I. while in custody in New York City on August 17, 1973. In a voluntariness hearing, outside the presence of the jury, there was evidence that Defendant Campanile was a heroin addict supporting a $70.00 per day habit (Record at 852), that he has been in custody over twenty (20) hours at the time of the alleged statement (Record at 846, 859-60, 971), that he was interrogated by two F.B.I. agents without benefit of counsel (Record at 851), that Defendant Campanile said he was ill and asked to lay down when he arrived at the Federal House of Detention (Record at 860, 867), that Defendant Campanile remembers going through withdrawal symptoms at the time of the alleged statement (Record at 861), that at the time interrogation started, the Defendant was not informed he was a suspect in the Vermont bank robberies (Record at 848, 849, 862, 971) and medical testimony that withdrawal symptoms from heroin may affect a person's mental capacity (Record at 939 through 956). Defendant contends that the admission of the statements violated the Omnibus Crime Control and Safe Streets Act of 1968 §701(a), 18 U.S.C. §3501,

and was inconsistent with the Fifth Amendment.

The so-called McNabb-Mallory Rule (McNabb v. U.S., 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819; Mallory v. U.S., 354 U.S. 449, 77 S.Ct. 1356, 1 L.Ed. 2d 1479) interpreting the "unnecessary delay" requirement of Rule 5(a) of the Federal Rules of Criminal Procedure was statutorily qualified by Section 3501 of the Omnibus Crime Control and Safe Streets Act of 1968. Section 3501 of that Act allows confessions (or incriminating statements) under Subsection (e) obtained within six (6) hours of arrest, if said confession or statement is voluntary. In determining voluntariness, the trial judge is to take into consideration (1) the time elapsing between arrest and arraignment, (2) whether Defendant knew the nature of the offense, (3) whether or not the Defendant knew he had the right to remain silent, (4) whether or not he was advised of his right to counsel and (5) whether or not the Defendant was without assistance of counsel when questioned. In the fact situation of the case at bar, Defendant Campanile's statement failed to meet the requirements of Section 3501 for two (2) reasons.

First, Defendant Campanile "was under arrest or other detention" over the six (6) hour time limitation in Section 3501(c).

The state of evidence is that Defendant Campanile had been in the custody of the New York Police Department and Federal Authorities approximately twenty-one (21) hours at the time of the alleged statement. It is true that the time limitation does not apply where the trial judge makes a finding that the delay was reasonable "considering the means of transportation and the distance to be traveled to the nearest available commission or other officer". But there is absolutely no evidence suggesting that the government made any effort to bring Defendant Campanile before a magistrate prior to interrogating him. Although availability of a magistrate in small rural areas might at times be a problem, it is hard to imagine a situation where no magistrate is available in New York City. But whether or not a magistrate was in fact available is academic at this point, the relevant consideration being the fact that there was absolutely no evidence upon which the trial judge could make a finding that the delay in excess of six (6) hours was reasonable because of the unavailability of a magistrate.

Secondly, upon consideration of all the circumstances surrounding the statement, and especially in light of the facts outlined in Section 3501(b), the trial judge erred in finding the

statement voluntary. The circumstances surrounding the statement have already been outlined above, but a few moments reviewing the specific consideration specified in Section 3501(b) seems in order. Defendant Campanile was taken into federal custody at approximately 9:00 p.m. on August 17, 1973, but was not brought before a magistrate by Federal Authorities within six (6) hours of his arrest. As previously indicated, Defendant Campanile was in the custody of local law enforcement agency for nineteen to twenty (19-20) hours prior to his interrogation by Federal Authorities. There is no logical reason to assume that detention by local authorities is any less likely to effect the voluntariness of a statement than detention by Federal Authorities. Thus, the combined state and federal detention must be considered. The second consideration that trial court must consider is whether or not the Defendant was aware of the charge against him at the time of the statement. The trial transcript shows that the Defendant was not advised of the charges at the initiation of the interrogation (Record at 848, 849,862). The third and fourth considerations have to do with the so-called Miranda warnings; was the suspect advised on his rights. These are the only enunciated considerations upon which the evidence at the voluntariness hearing supports the government. The

evidence suggests that Defendant Campanile was read his Miranda warnings, but it is interesting to note that he never signed the waiver. The fifth consideration is whether or not the Defendant had assistance of counsel at the interrogation. Of course there is no dispute here, the Defendant did not have the assistance of counsel at the interrogation. This is in spite of the fact that the F.B.I. was aware that he had been in detention for over twenty (20) hours, that the Defendant was a heroin addict whose last ingestion was some twenty-four (24) hours before and that the Defendant was tired and physically uncomfortable and wanted to go to sleep at the time of the interrogation. To allow a statement elicited from a weary Defendant by professional interrogators under these circumstances, violates the statutory mandates of Section 3501.

The use of the statement also violates traditional principles of fundamental fairness under the Fifth Amendment. The constitutional ramifications of statements obtained during a custodial police interrogation was the subject matter of Miranda v. Arizonia, 384 U.S. 436, 80 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). Miranda is much too important to adequately summarize, but for purposes of the question at bar it held as follows. Any questioning must be proceeded by adequate warnings. The Defendant may

waive his rights after the warnings, provided the waiver is voluntarily, knowingly, and intelligently given. The burden to establish a voluntary, knowing and intelligent waiver is on the government. As stated in Miranda:

> "If the interrogation continues without the presence of any attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Escobedo v. Illinois, 378 U.S. 478, 490, N.14. This Court has always set high standards of proof for the waiver of constitutional rights, Johnson v. Zerbst, 304 U.S. 458 (1938), and we reassert these standards as applied to in-custody interrogation. (384 U.S. 436, 475)"

The Miranda court goes on to say the warnings and the waiver necessary in accordance with the opinion are prerequisites to the admissibility of any statement by the Defendant.

The degree of proof necessary to establish voluntariness has been expressed as anything from beyond a reasonable doubt (Rhone v. State (Miss.), 254 So 2d 750; State v. Thundershield (SD) 160 NW 2d 408, Good Child v. Burke, 27 Wis 2d 244, 133 NW 2d 753) down to a preponderance of the evidence (Lego v. Twomey, 404 U.S. 477, 30 L.Ed. 2d 618, 92 S.Ct. 619). A review of the evidentiary presentation at the voluntariness hearing below as set forth above, simply fails to meet even the lowest burden required by Lego v. Twomey.

INTRODUCTION OF STATEMENT OF WILLIAM MONKS TO SHIRLEY BROWN VIOLATED DEFENDANT CAMPANILE'S CONSTITUTIONAL RIGHT OF CONFRONTATION AS GUARANTEED BY THE 6th AMENDMENT OF THE UNITED STATES CONSTITUTION

The testimony of Shirley Brown (record at 1071 and 1074) to the effect that Defendant Monks allegedly told her that he (Monks) and Defendant Campanile planned to rob a bank in New Jersey in 1972 runs afoul of the confrontation clause of the 6th Amendment of the United States Constitution. Bruton vs. U.S., 391 US 123 (1968).

In the instant case, Defendant Monks exercised his constitutional right by electing not to testify. Accordingly, Defendant Campanile's right to cross-examine the witness against him was abridged. The well known Bruton rule may be summarized by noting that introduction of heresay declarations at joint trial made by a Defendant that inculpate a co-defendant constitutes prejudical error even though a court may give clear and understandable instructions that such declaration may only be considered against the Defendant and must be disregarded with respect to co-defendant (see Court's Instruction - record at 1320, objection at 1326-27).

As stated by Mr. Justice Brennon in Bruton at 126, quoted from Pointer vs. State of Texas, 380 US 400 at 406-407, "a major reason underlying the confrontation rule is to give a Defendant charged with a crime an opportunity to cross-examine witnesses against him". It is obvious that the declaration made by Defendant Monks to witness Brown, to the effect that Monks and Defendant Campanile planned to rob a bank in New Jersey, was inculpatory as to Defendant Campanile.

Upon the assumption, arguendo, that Defendant Campanile's constitutional rights were not violated by the aforesaid testimony of witness Brown, such testimony was nevertheless inadmissable under the 'similar act theory'. see argument at page 7, supra, nor is such testimony admissible to prove knowledge, intent, plan or design, Wigmore on Evidence, Vol. 2, § 300, 346 (3rd. Ed. 1940).

DENIAL OF DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED FROM PREMISES SITUATED IN NEW JERSEY WAS REVERSIBLE ERROR

The Trial Judge denied Defendant's Motion to suppress evidence seized from the apartment in Patterson, New Jersey solely on the basis of Defendant's lack of standing (Record at 823). On direct examination at the suppression hearing, Defendant Campanile testified that the searched premises were originally leased by his wife and subsequently sublet to his brother; that he reserved the right to use the premises when he sublet the same to his brother; that he occasionally stayed at the apartment; that he was still receiving mail at the time of the search and that his home, since January, 1972, was another apartment in Elmwood Park, New Jersey (Record at 815 through 822).

The issue of Defendant's standing to attack the search and seizure should be decided with reference to Rule 41(e) of the Federal Rules of Criminal Procedure. The Rule predicates standing on whether or not one is a "person aggrieved".

The Defendant's standing to challenge the Government's search in the instant case is supported on two grounds

recognized by the United States Supreme Court in Jones vs. United States, 362 U.S. 266, 80 S. Ct. 725 (1960). First, as the target of the search, Defendant Campanile is by definition a "person aggrieved" under Rule 41(e) and therefore has standing to challenge the constitutionality of the search. Second, Defendant Campanile's testimony at the suppression hearing established an interest in connection with the searched premises that gave him a reasonable expectation on his part of freedom from governmental intrusion upon the premises.

As to the first ground, Jones vs. United States defined an aggrieved person as "a victim of a search or seizure, on against whom the search was directed" (at Page 261). In the instant case, Defendant Campanile, was the target of the search. Therefore, as a "person aggrieved", Defendant Campanile had standing to challenge the constitutionality of the search under Rule 41(e). Its true that the Court in Jones vs. United States did not rely solely on this "target" of the search doctrine. But, as recognized by this Circuit in United States vs. Mapp (2CCA) 476 F 2d 67, 71 (1973), the language of Jones vs. United States clearly suggested that the "target" of a search is A FORTIORI a "Person aggrieved" under Rule 41(e).

As to the second ground sustaining Defendant's standing, we refer to Defendant's testimony at the suppression hearing as summarized above and suggest that the same made out a sufficient interest in the premises to establish him as a "person aggrieved" by the search. Jones v. United States did away with the antiquated view that it was necessary to show a legal possession or ownership of the searched premises in order to assert standing. It instructed the inferior courts to depart from that earlier course of the cases deciding standing on the basis of subtle property law distinctions and recognized that the standing question raised personal constitutional right questions.

The Supreme Court emphasized the break from the prevailing view prior to Jones v. United States and recognized that the protection of the 4th Amendment extended to such places as public telephone booths, Katz v. United States, 389 U.S. 347, 88 S. Ct. 507 (1967) and business offices, Mancusi v. Deforte, 392 U.S. 364, 88 S. Ct. 966 (1968). Quoting directly from Katz v. United States, the Court said that "the 4th Amendment protects people, not places (at Page 351). The rule now, as expressed in Combs v. United States,

408 U. S. 224, 227, S. Ct. 2284 (1972), is that if the Defendant can establish facts showing an interest in connection with the searched premises "that gave rise to a reasonable expectation on his part of freedom from governmental intrusion" upon the premises he would have demonstrated a basis for standing to attack the search. The trial transcript, as referenced above, shows that Defendant was legimately, at least part time, a resident of the searched premises and the lower court's denial of his standing to challenge the legality of the search was reversible error.

INTRODUCTION OF GERMAN LUGER, ASSORTED AMMUNITION AND GUN-CLEANING EQUIPMENT CONSTITUTED REVERSIBLE ERROR

Federal Agent Heon testified that he seized a black attache' case in an apartment at 444 East 36th Street, Patterson, New Jersey, containing, among other items, a German Luger, assorted ammunition and gun-cleaning equipment (Record at 978, 885-886, 894-895) which items were admitted into evidence. But both Defendants in the instant case are charged with the non-violent crimeof larceny. Crimes involving force or violence in taking or attempting to take property from an insured bank are covered under sub-sections (a) and (d) of 18 U.S.C.A. 2113 - not under sub-section (b) thereof which

is the subject matter of the crimes on which Defendants were convicted below.

In order to be admissible, it is generally recognized that the offered evidence must not only be logically relevant but also legally relevant and of a character to be deemed of probative value, this is, the offered evidence must support a rational inference related to a material fact to be proven. McCormicks, Law of Evidence, 315-321, § 152 (1954). Although the offered evidence may have probative value, if such value is slight and the prejudical character of the evidence strong, the trial judge has a duty, in the exercise of discretion, to exclude it. U.S. v. Knohl, (2CCA) 379 F2d 427 (1967).

Defendant Campanile contends that the probative value, if any, of the evidence herein discussed, is slight as an aid to the Jury in arriving at a determination of the truth or falsity of the charges that Defendant Campanile did unlawfully, willingly and knowingly take and carry away, with intent to steal or perloin, property, money or other things of value, belonging to, and in the care, custody, control, management and possession of Franklin and Howard Banks. But the testimony of Agent Heon (Record at 894-895) and the introduction of and

parading of such physical evidence before the Jury could only serve to unduly prejudice the Jury against Defendant Campanile.

CONCLUSION

By reason of the errors set forth above and for the protection of individual rights as set forth in the Fourth, Fifth and Sixth Amendments to the United States Constitution, the case against Anthony Thomas Campanile should be remanded for a new trial.

Dated at Burlington, Vermont, this 27th day of January, 1975.

Respectfully submitted,

J. William O'Brien
Attorney for
Anthony Thomas Campanile,
Defendant-Appellant

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

WILLIAM MONKS and
ANTHONY THOMAS CAMPANILE,
Appellants

vs.

Docket Nos. 74-2160
74-2320

UNITED STATES OF AMERICA,
Appellee

CERTIFICATE OF SERVICE

I, J. William O'Brien, Attorney for Anthony Thomas Campanile, do hereby certify that I have served the enclosed Brief and Appendix upon United States of America by mailing copies thereof unto Jerome F. O'Neill, Assistant United States Attorney for the District of Vermont, at Federal Building, West Street, Rutland, Vermont, 05701, and upon Co-defendant, William Monks, by delivering copies thereof unto his Attorney of Record, Richard C. Blum, 112 Church Street, Burlington, Vermont, 05401.

Dated at Burlington, County of Chittenden and State of Vermont this 27th day of January, 1975.

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